No. 04-1068

Supreme Court, U.S.
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In The
Supreme Court of the United States

JOHN BARTH,

Petitioner,

v.

TOWN OF SANFORD, MAINE AND INHABITANTS, DANIEL CASEY, AND JOHN DOE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI OF RESPONDENTS TOWN OF SANFORD, MAINE AND INHABITANTS

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QUESTION PRESENTED

Whether the U.S. Court of Appeals for the First Circuit erred as a matter of law in affirming the decision of the U.S. District Court for the District of Maine which dismissed Petitioner/Plaintiff's Complaint, pursuant to F.R.Civ.P. 8, after the magistrate judge provided Petitioner with guidance as to complying with Rule 8 and expressly warned Petitioner that his failure to file a compliant Amended Complaint would risk a dismissal with prejudice.

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Town of Sanford and the Inhabitants of the Town of Sanford respectfully oppose the petition for a writ of certiorari to review the judgment of the United States Court of Appeal for the First Circuit in this case. The decision of the Court of Appeals for the First Circuit does not create a conflict among the circuits, nor present any novel questions of law. In fact, this Court has previously denied a petition for certiorari in an earlier case from the First Circuit involving exactly the same issue, i.e., the affirming of a discretionary decision of a District Court to dismiss a complaint for failure to comply with F.R.Civ.P. 8. *See Kuehl v. F.D.I.C.*, 8 F.3d 905 (1st Cir. 1993), *cert. denied*, 511 U.S. 1034, 114 S.Ct. 1545 (1994).

CONSTITUTIONAL, STATUTORY OR REGULATORY PROVISIONS INVOLVED

Respondents contend that none of the Constitutional provisions alleged by Petitioner to be involved in this case are at issue in the decision of the Court of Appeals. This case merely involves a dismissal of Petitioner/Plaintiff's Complaint, with prejudice, pursuant to F.R.Civ.P. 8, as a result of Petitioner's refusal to follow the orders of the District Court that he file an Amended Complaint that was compliant with Rule 8, and ignoring the express warning of the court that refusal to file an appropriate Amended Complaint could result in dismissal of the case, with prejudice.

Neither Petitioner's Fifth Amendment right not to be compelled to offer evidence against himself, his Fourteenth Amendment right not to be deprived of life, liberty or property without due process of law and to equal protection under the law, nor Article III Section 1's requirement that federal judges exercise good behavior in carrying out their office are implicated in any way in this Petition.

STATEMENT OF THE CASE

This case began when Petitioner/Plaintiff filed a Complaint in the United States District Court for the District of Maine, alleging a grand conspiracy to deprive him of his Constitutional rights that involved the citizens of the Town of Sanford, Maine, their elected officials and the town's employees, a John Doe Defendant, Daniel Casey (a neighbor of Petitioner not connected to the town), as well as a sitting federal judge, Honorable Gene Carter, and sitting magistrate judge, Honorable David M. Cohen, of the District Court for the District of Maine. When advised that the inclusion of the Maine federal judges as parties would necessitate a transfer of the case to the federal court in Concord, N.H., Plaintiff filed a voluntary dismissal of the claims against Judge Carter and Magistrate Judge Cohen. Despite this, Petitioner's Complaint and Amended Complaint are replete with continued references to the conspiratorial acts of the federal judiciary against him. (Note: Petitioner did not contact counsel for Respondents to discuss an agreed upon Appendix for this appeal, nor did he send any proposed designations for an Appendix, but rather simply inserted some documents at the end of his bound brief. The Amended Complaint is

purportedly on file with this Court and bound separately as Appendix J, *see* Petitioner's brief at p. iii, but no copy of that separate binding was provided to Respondents' counsel. Given the voluminous nature of the pleadings at issue, the original Complaint with exhibits and the Amended Complaint, Respondents will simply cite to the Court's original record concerning those documents, pursuant to Sup. Ct. R. 26(2), rather than filing a separate Appendix.)

This appeal arises as a result of a decision by the Court of Appeals for the First Circuit that affirmed the decision of the United States District Court for the District of Maine dismissing Petitioner's Amended Complaint with prejudice, pursuant to F.R.Civ.P. 8. The decision of the District Court was based on Plaintiff's refusal to follow the Court's prior order regarding the filing of an appropriate Amended Complaint. *See* Recommended Decision On Defendants' Motion To Dismiss Amended Complaint of June 22, 2004 (per Kravchuk, magistrate judge), Appendix D to Petitioner's brief, and Order Affirming the Recommended Decision of the Magistrate Judge of July 13, 2004 (per Singal, J.)

The magistrate judge had previously granted Respondents' Motion to Dismiss Petitioner's original Complaint, which consisted of a forty-three (43) page Complaint, accompanied by a sixty-two (62) page Memorandum of Law and seventy (70) exhibits. *See* Complaint and Demand For Jury Trial of March 12, 2004. The original Complaint that was filed contained internal references and citations to the accompanying memorandum of law and attached exhibits. Without reviewing the entire Complaint, including the attached memorandum and exhibits, this Court cannot accurately understand the

impossible task faced by defense counsel in trying to understand the pleadings and drafting a responsive pleading that addressed its rambling allegations. Likewise, without that review this Court may not appreciate the significant effort expended by the magistrate judge in outlining for Petitioner the problems with his Complaint, providing detailed guidance as to how to craft a Complaint that would be compliant with Rule 8, and listing specific provisions that had to be omitted due to their scandalous nature. A review of the original Complaint in this Court's record would show the scope of the effort expended by the magistrate judge on Petitioner's behalf.

The magistrate judge found that the original Complaint did not comply with F.R.Civ.P. 8, and that Respondents could not reasonably be expected to answer such a pleading. The court ordered Petitioner to file an Amended Complaint that met the requirements of Rule 8, and also identified specific problems concerning allegations in the Complaint that constituted "scandalous matter" that the magistrate judge ordered to be omitted from any Amended Complaint to be filed. Petitioner was specifically advised that failure to do so would result in dismissal, with prejudice, of his case. *See* Recommended Decision On Defendants' Motion To Dismiss or Strike Plaintiff's Complaint, dated April 22, 2004, included in Petitioner's brief as Appendix G.

When Petitioner's Amended Complaint did not meet the requirements of Rule 8 generally, nor follow the Court's directives regarding specific problems that were to be corrected in any Amended Complaint, Respondents again moved to dismiss and/or to strike that pleading. On June 22, 2004 the magistrate judge issued a Recommended Decision On Defendants' Motion To Dismiss

Amended Complaint, recommending that the Amended Complaint be dismissed with prejudice. *See* Appendix D in Petitioner's brief. Petitioner objected to this second Recommended Decision, essentially continuing his argument that he should not be bound by the limitations of Rule 8 and also accusing the magistrate judge of "criminal acts," *see* Appendix C in Petitioner's brief, but the Recommended Decision was affirmed by the assigned U.S. District Court judge on July 13, 2004 and judgment entered in Respondents' favor that same date. (Note: In his Index of Appendices, Petitioner lists this Judgment as appearing as Appendix B. The Judgment is not, in fact, included in the brief, but is replaced by an editorial comment by Petitioner that this court ordered judgment "merely rubberstamps the magistrate (sic) recommendation, failing to make any argument in opposition to the plaintiff." *See* Appendix B, included in Petitioner's brief.)

Petitioner appealed the decision of the District Court to the United States Court of Appeals for the First Circuit, arguing that the District Court judge had abused his discretion in granting Respondents' motion seeking dismissal of the Amended Complaint pursuant to F.R.Civ.P. 8. Petitioner broadened his groundless allegations by adding accusations that the federal judges in Maine engaged in unlawful collusion with defense counsel. Petitioner added to his scandalous allegations against Respondents by asking the Court of Appeals to "initiate proceedings to investigate, censure, and remove magistrate Kravchuk and judge Singhal (sic) . . . for willful abuse of discretion with intent to facilitate the extortion of property from the plaintiff by violence and municipal corruption." *See* Plaintiff's Statement Of The Issues To Be Presented On Appeal, dated July 20, 2004, at p. 2.

The Court of Appeals, in a terse two page opinion, affirmed the decision of the District Court, finding no abuse of discretion in the actions of the court below. The appellate court specifically noted the effort made by the magistrate judge to provide Petitioner with detailed guidance as to how to draft an amended complaint that would fare better under Rule 8 than his original Complaint had. The Court of Appeals also concurred with the magistrate judge's assessment that Petitioner "made only a half-hearted effort to comply with the court's earlier directive and that the court's primary advice . . . was essentially ignored." *See* Judgment of United States Court of Appeals for the First Circuit, dated December 29, 2004, Appendix A in Petitioner's brief, at p. 1. The appellate court also dismissed summarily "as spurious and merely pejorative appellant's contentions of collusion between defendants and the district court." *Id.* at p. 2. The appellate court further held that Petitioner's disregard of the magistrate judge's instructions regarding amending his Complaint "appears deliberate as appellant's litigatory pattern reveals a persistent and willful refusal, both in state and federal court, to submit a complaint that complies with pleading requirements and enables a defendant to properly frame a responsive pleading." *Id.* at pp. 1-2. It is that ruling for which Petitioner seeks a review by writ of certiorari.

SUMMARY OF THE ARGUMENT

Respondents contend that Plaintiff cannot demonstrate that the Court of Appeals erred as a matter of law in affirming the decision of the District Court, based on an abuse of discretion standard, under the facts of this case

and existing law. Plaintiff has a long history in state and federal court in Maine of filing missives filled with baseless and scandalous accusations against various government officials and others, including their having plans to murder him and to vandalize his property, and their engaging in a great conspiracy against a charity school, allegedly ready and willing to help tens of thousands of Third World orphans, but which exists only in Plaintiff's mind and his pleadings. *See* Recommended Decision On Defendants' Motion To Dismiss Amended Complaint, Appendix D at p. 3 n. 1, *citing Barth v. Town of Sanford*, No. 01-208-P-C (D. Me. Nov. 5, 2001) (Recommended Decision denying class certification and describing Petitioner's prior state court litigation history). In most of Plaintiff's recitation of damages, he refers to this charity school and its property in a way that makes it appear he is attempting not only to represent his own interests *pro se*, but also to represent the interests of this entity in violation of federal law. *See In re Victor Publishers, Inc.*, 545 F.2d 285 (1st Cir. 1967). This apparent unlawful representation was also noted by the District Court in its initial Recommended Decision, Appendix G at n. 2.

The essence of Respondents' argument against the granting of the petition is that it is settled law that a District Court has the power to dismiss a complaint when a plaintiff refuses to comply with the Federal Rules of Civil Procedure, including the "short and plain statement" requirement of Rule 8. This is especially true when the court gives the offending plaintiff an opportunity to amend the pleading, pointing out specific scandalous allegations and verbose counts that must be removed, and the court's order is "essentially ignored." The District Court's decision to dismiss the complaint is reviewable only for abuse of

discretion. The decision of the Court of Appeals can be overturned only upon a finding that it erred as a matter of law in finding no abuse of discretion on the part of the District Court.

LEGAL ARGUMENT

A. THE COURT OF APPEALS DID NOT ERR IN FINDING THAT THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN GRANTING RESPONDENTS' MOTION TO DISMISS PETITIONER'S AMENDED COMPLAINT FOR HIS FAILURE TO FILE PLEADINGS CONFORMING TO THE REQUIREMENTS OF F.R.CIV.P. 8 AND TO OBEY A PRIOR COURT ORDER.

Petitioner commenced this action by filing a forty-three page brief, supported by a sixty-two page Memorandum of Law and seventy exhibits. The Complaint was not divided into discrete paragraphs, each containing a single allegation to which a response could be crafted, but contained lengthy paragraphs with sentence after sentence of specious and groundless allegations. The factual allegations included alleged grievances going back well beyond the six year statute of limitations and including a revisit of prior actions filed in state and federal court (that had all been previously dismissed by the courts) in which the judiciary allegedly colluded with defense counsel to deprive Petitioner of his Constitutional rights. This action also initially included as Defendants Judge Gene Carter and Magistrate Judge David Cohen of the U.S. District Court for the District of Maine. The alleged misdeeds of the two judges included allegations of falsifying the record, showing "gross prejudice" to Plaintiff, abusing their office

and betraying the public trust. Magistrate Judge Cohen was also alleged to have engaged in "large private financial transactions made through his wife, including transactions with attorneys of law firms practicing before this Court." Affidavit of John Barth, dated 03/12/04, Appendix of First Circuit appeal at C-1, p. 2. The judicial defendants were dismissed from this case only because Petitioner did not want to litigate it in New Hampshire federal court, as he was advised he would have to do.

At the Court of Appeals Petitioner continued his groundless and slanderous accusations against not only the Respondents, but also against the judges and undersigned defense counsel involved in this case. *See* Brief of Appellant, First Circuit appeal, at pp. 20-24. They include that the undersigned counsel for Respondents was obviously "tipped off" to the plan of the court below to dismiss Petitioner's case if defense counsel would provide the court any "pretext" to do so. Some imagined connection that proved in Petitioner's fertile mind that the court acted in collusion with defense counsel was the fact that a Margaret Benjamin witnessed real estate transactions of Magistrate Judge Cohen's wife in 1983, and that this person is "very likely related" to either undersigned counsel or another Portland attorney, Thomas Benjamin. *Id.* at 21. In fact, Margaret Benjamin, the ex-wife of undersigned counsel for Respondents was, for a period of approximately one year (1983), the legal secretary of Magistrate Judge Cohen, who was then a lawyer in private practice. Presumably, her services as a notary public were utilized by her then boss to witness his wife's signature on some document that Plaintiff, ever the sleuth, apparently found in the Registry of Deeds. Such allegations of collusion do not warrant a serious response. They are alluded to here,

however, to illustrate the workings of Plaintiff's mind regarding the alleged conspiratorial forces arrayed against him by municipal officials and employees, attorneys and both the state and federal judiciary, and to demonstrate the difficulty in being forced to respond to the absurd and nonsensical. Plaintiff's entire dissertation on due process and equal protection under the law are premised on these baseless accusations of judicial misconduct and collusion between the court and defense counsel. No evidence has ever been produced nor authority cited for such a finding.

The magistrate judge went above and beyond what was required when she issued her order granting Respondents' initial Motion to Dismiss the original Complaint. Included in her Recommended Decision were very specific directions and/or suggestions to Petitioner that, if followed, would have enabled him to file an Amended Complaint that would conform to Rule 8, as well as granting him ample time to do so. *See* Appendix G in Petitioner's brief. In her Recommended Decision on Defendants' Motion To Dismiss the Amended Complaint that Petitioner subsequently filed, the magistrate judge noted: "[T]he primary advice the Court offered Barth has been essentially ignored." *See* Appendix D in Petitioner's brief at p. 2. Petitioner's Amended Complaint suffered from the same verbosity and prolixity of the original Complaint. While deleting some specific portions of the original Complaint that the court had flagged as being subject to being stricken for other reasons, Petitioner "ignored the admonition concerning verbosity." *Id.*

A District Court has the power to dismiss a Complaint when a Plaintiff fails to comply with the Federal Rules of Civil Procedure, including the requirement of F.R.Civ.P. 8 that the pleading present a "short and plain statement" of

the claim asserted. *Kuehl v. F.D.I.C.*, 8 F.3d 905 (1st Cir. 1993), *cert. denied*, 511 U.S. 1034, 114 S.Ct. 1545 (1994); *Vakalis v. Shawmut Corp.*, 925 F.2d 34 (1st Cir. 1991); *Mangan v. Weinberger*, 848 F.2d 909 (8th Cir. 1988).

In *Kuehl*, the Court of Appeals for the First Circuit refused to find an abuse of discretion in the dismissal by the court below of an Amended Complaint under Rule 8. Plaintiff in that case had been ordered by the magistrate judge to file an Amended Complaint that met the requirements of Rule 8 and "gratuitously gave plaintiffs rather specific guidance as to how the complaint should be amended." 8 F.3d at 907. The *Kuehl* plaintiffs' original Complaint was forty-three (43) pages long, the same as Petitioner's in the instant case. In response to the court's order, the Plaintiffs in *Kuehl* filed an Amended Complaint that was still forty-three pages long, only it was double spaced, and included all the original Defendants and the same number of counts. In response, Defendants filed motions to dismiss the Amended Complaint, which the magistrate judge recommended be granted. The Recommended Decision was subsequently affirmed by the District Court judge. As factors in his Recommended Decision, the magistrate judge in *Kuehl* noted that, "despite explicit directions" in his prior order, plaintiffs had "proceeded to file a verbose and redundant complaint containing the same number of counts as the original." *Id.* He further noted that "several counts were nearly identical to each other, several other counts were ambiguous as to which defendant was named, and 'the possible substance of the claim is hidden in prolixity.'" *Id.*

In the instant case, the magistrate judge assessed Petitioner's Amended Complaint in a similar vein. She noted that the "primary advice the Court offered Barth

has been essentially ignored." Appendix D in Petitioner's brief at p. 2. The Amended Complaint included, *inter alia*, an unnumbered summary paragraph, an unnumbered introduction paragraph, an unnumbered jurisdictional paragraph, a twenty (20) page, fifty-four (54) paragraph "facts" section, two counts containing unnumbered paragraphs and incorporating various parts of the Memorandum of Law and exhibits that the court had previously ordered stricken, and two and one-half pages of unnumbered conclusions. *Id.* The factual allegations were also noted to be overly long and alleging multiple facts per paragraph, contained paragraphs that were non-sequential, numbered paragraphs that were missing, and paragraphs that were not incorporated into either count of the Amended Complaint. *Id.* The magistrate judge further noted that Petitioner had actually condensed his line spacing, rather than reducing the verbosity of his claim, a specific requirement of the Court's prior order. *Id.* at p. 3. Finding Petitioner's Amended Complaint to be every bit as prolix and verbose as his original Complaint, the magistrate judge concluded that Petitioner's "half-hearted effort to comply with the Court's prior order" was insufficient to avoid a recommendation that the Amended Complaint be dismissed with prejudice. *Id.* at pp. 2-3.

Respondents contend that the District Court acted appropriately and well within its discretionary power when it ruled that they were not required to file an Answer to Plaintiff's Amended Complaint, and that Petitioner's Amended Complaint should be dismissed for failure to comport with the requirements of Rules 8 and 10, as well as the court's prior order. The Court of Appeals thus did not err as a matter of law in affirming that decision and finding no abuse of discretion in the District

Court's actions. A Plaintiff expecting a responsive pleading requirement to be imposed on a Defendant is first required to file a complaint whose content and form is recognizable under the Federal Rules of Civil Procedure, particularly Rules 8 and 10. Because Petitioner refused to do so, his Complaint was subject to being stricken pursuant to Rules 8, 10, and 12. This is especially true when a prior court order provided him a "generous opportunity to sharpen his pleadings," an opportunity which he refused to take. *See United States v. Melrose-Wakefield Hospital*, 360 F.3d 220, 242 n. 31 (1st Cir. 2004).

Rule 8(a) requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 10(b) requires that a complaint contain separately numbered paragraphs limited to a statement of one single set of circumstances to each paragraph. Petitioner did not comply with these requirements, among others. In addition, in the Recommended Decision regarding the original Complaint, the magistrate judge specifically ordered Petitioner to delete certain portions of his original complaint. Despite that order, Petitioner chose to include in his Amended Complaint the same type of redundant, immaterial, impertinent and scandalous allegations that were objectionable and ordered stricken from his original Complaint by the court.

The purpose of Rule 12(f) is to minimize delay, prejudice and confusion by narrowing the legal issues before the court. *RTC v. Fleischer*, 835 F. Supp. 138 (D. Kan. 1993). A Motion to Strike under Rule 12(f) is appropriate when a complaint contains redundant or immaterial detail. *Giuliano v. Everything Yogurt*, 819 F. Supp. 240 (E.D.N.Y. 1993). Although motions to strike are not favored, *Coolidge v. Judith Gap Lumber Co.*, 808 F.Supp. 889, 893 (D. Me.

1992), the striking of an entire pleading is appropriate where, as here, it is in gross violation of Rule 8. *Kuehl v. F.D.I.C.*, 8 F.3d 905 (1st Cir. 1993), *cert. denied*, 511 U.S. 1034, 114 S.Ct. 1545 (1994); *Vakalis v. Shawmut Corp.*, 925 F.2d 34 (1st Cir. 1991); *Bertucelli v. Carreras*, 467 F.2d 214 (9th Cir. 1972). Although, a plaintiff may be properly permitted to correct such a defective complaint, *Bertucelli*, 467 F.2d at 216, a defendant need not respond to a complaint that is so complex and lengthy that merely having to answer it in the point by point fashion required of responsive pleadings by the Federal Rules of Civil Procedure imposes an undue burden. *See United States v. Johns-Manville*, 1 F.R.D. 548, 550 (N.D. Ill. 1941). In *Revere Camera Co. v. Eastman Kodak Co.*, 81 F. Supp. 325, 333 (N.D. Ill. 1948), the court permitted the striking of a portion of the Plaintiff's Complaint referencing prior litigation which would have required named defendants "to get out and analyze each case of similar character in which it might have been involved." A similar problem clearly existed for Respondents in this case, given the allegations that included Petitioner's prior history of suits against government officials.

The individual problems with the Petitioner's Amended Complaint were legion. A Complaint should not contain superfluous historical allegations, *Healing v. Jones*, 174 F. Supp. 211 (1959), *affirmed per curiam* 373 U.S. 758 (1963) (more extensive references to events prior to 1882 than necessary to litigate an Executive Order of 1882 setting aside land.). Petitioner's Amended Complaint alleges gratuitous references to numerous historical events. *See, e.g.*, Amended Complaint ¶¶ 1-3, 8, 18-21, 48, 53 (containing allegations regarding the historical development of Nasson College, the character and make up of

the Town of Sanford, and setting forth events well beyond the applicable statute of limitations that included activities of ATV "sympathizers," certain public opinion polls, and nuisance allegations already litigated and dismissed).

Moreover, Petitioner "honeycomb[ed] the [Amended] Complaint with evidential references" to various irrelevant or totally unsubstantiated claims. *Independent Theatres, Inc. v. American Broadcast*, 179 F. Supp. 489, 490 (S.D.N.Y. 1959). For example, at paragraph 36 of the Amended Complaint, Petitioner alleges some $2,975,000 in damages for an alleged loss of "orphan-years of sponsorship," and charged that the Town had subjected roughly 1700 orphans to "a life of squalor and abuse." *See* Amended Complaint (allegedly filed with this Court as Appendix J, but never provided to undersigned counsel) at p. 12. Petitioner did this in spite of the court's clear directive to omit such references. *See* Magistrate's Recommended Decision regarding the original Complaint, Appendix G at p. 6 ¶7 ("The following portions of the complaint should be omitted from any forthcoming revision because they would be appropriately subject to a further motion to strike: The allegation on page 23 that the Town has ruined the childhoods of some 1700 orphans or otherwise subjected them to a life of squalor and abuse. . . .").

Petitioner's Amended Complaint also inappropriately contained "scandalous" matter, that is, allegations which cast a baseless and derogatory light on someone. *Alvarado Morales v. Digital Equipment Corp.*, 843 F.2d 613 (1st Cir. 1988) (allegations that town police officers conspired to attack Plaintiff); *Nault's Automobile Sales v. American Honda Co.*, 148 F.R.D. 25 (D.N.H. 1997) (allegations of

perjury and subornation of perjury stricken as being without basis). Here, Petitioner inappropriately and falsely claims Town officials and police officers are responsible for acts of vandalism, arson, etc., committed by unknown persons as well as perjury, abuse of office, conspiracy, etc. and alleges a wholesale indictment of the entire body politic of the town (despite elective changes in its makeup over a decade) by accusing it of having "a long history of crime, tort and abuse of office against Plaintiff." *See, e.g.*, Amended Complaint ¶¶ 66-71. In addition, Petitioner refers to one individual as having a "sleazy and cynical demeanor" and draws an analogy between Petitioner's position and that of "a defenseless woman ... recently murdered on sight in her home." *Id.* at ¶¶ 47 and 67, App. P at pp. 16 & 23, respectively.

The numbered paragraphs in the Amended Complaint are also out of sequence: numbered paragraphs 4 through 7 are omitted as are numbered paragraphs 9 through 17. Nevertheless, Petitioner then refers to the contents of these omitted paragraphs later in the Amended Complaint. *See, e.g.*, Amended Complaint at ¶¶ 40, 61, 66, 67, "Conclusion" section, and the section labeled "Counts". Respondents could not reasonably have been expected to frame a response to paragraphs in the Amended Complaint that include material that had been ordered omitted from the Amended Complaint.

Petitioner was instructed to omit exhibits and legal memoranda from his complaint in the magistrate judge's original Recommended Decision. Appendix G in Petitioner's brief at p. 6. In his Amended Complaint, however, Petitioner continued to cite to these exhibits and legal memoranda despite having removed them, which put

Respondents in an impossible position with respect to being able to draft a responsive pleading. *See, e.g.*, Amended Complaint ¶¶ 8, 20, 21, 24, 25, 26, 28, 33, 35, 36, 37, 43, 56, 62, 63, 68 (citing to exhibits) and "Counts" and "Conclusion" sections (citing to legal memorandum).

Petitioner also placed tables within the body of the Amended Complaint that purport to list various other suits he has been involved in, both in state and federal court. *See* Amended Complaint at pp. 10 & 17 ¶¶ 31, 53. The matters that were raised, or which could have been raised, in those proceedings are *res judicata* and it is improper to plead as factual allegations the underlying factual backgrounds of those other cases that have all been dismissed by the courts. These matters were subject to being stricken under Rule 12(f) because they are immaterial to this litigation, except insofar as necessary to plead and decide the affirmative defense of *res judicata*. In addition, the "Contents" section of the Amended Complaint is immaterial and redundant and subject to being stricken under Rule 12(f). Whether the standard violated is one of legal issue, evidentiary issue, or just plain scandalous and baseless accusations, Petitioner's Complaint contains myriad examples of exactly what Rule 8 seeks to eliminate from civil litigation in federal court.

Notwithstanding Petitioner's access to voluminous source material and apparent fascination with imagined conspiracy theories, case law has consistently held that lengthy, defamatory tomes are not an appropriate vehicle to initiate a civil cause of action. For example, in *Metropolitan Theatre Corp. v. Warner Bros. Pictures, Inc.*, 12 F.R.D. 516 (S.D.N.Y. 1952), the court struck extensive evidentiary and conclusory statements, because the

complaint listed forty-two (42) defendants and consisted of ninety-six (96) paragraphs in a fifty-five (55) page booklet divided into seven (7) parts, separated into subdivisions within subdivisions, and with the first forty-eight (48) paragraphs devoted to a minute particularization of each of the parties and a description of the history of the motion picture industry. In *Johns-Manville Sales Corp. v. Chicago Title & Trust Co.*, 261 F.Supp. 905 (D. Ill. 1966), a complaint was stricken that included a single count in sixty-nine (69) paragraphs and thirty-nine (39) pages in addition to many group exhibits. More recently, in *Gonzales v. Wing*, 167 F.R.D. 352, 255 (N.D.N.Y. 1996), the court struck a two hundred eighty-seven (287) page complaint when the court could not tell what facts supported which claims. The differences between those complaints and the two filed in the instant case are only matters of degree. The legal principles implicated in those earlier decisions are no less at play here, and the pleadings in this case deserve the same fate.

Moreover, several sections of the Amended Complaint run afoul of the Rule 10(b) requirement that averments be made in numbered paragraphs limited to a single set of circumstances. At the outset, the "Summary", "Introduction", and "Counts" sections of the Amended Complaint are not numbered and contain extensive argument and legal conclusions such that, short of a general denial, it is impossible to draft a meaningful response to the multitude of allegations contained within them. Further, the vast majority of the seventy-one (71) numbered paragraphs of the Amended Complaint contain allegations or arguments too numerous to allow for a succinct response. *See, e.g.*,

Amended Complaint at ¶¶ 1, 2, 19, 26, 27, 35-38, 40, 41, 43, 50, 51, 54, 61, 62, 66, 71.

Responding to these numerous rambling accusations within each numbered paragraph becomes even more a burden on Respondents when their responses are limited to only a few options: (a) a denial of a specific allegation; (b) that the Defendant possess insufficient information to form a belief as to the truth or falsity of the allegation, (c) that the allegation contains the opposing party's legal contentions and conclusions and requires no response; and (d) that the allegation does not concern these particular Defendants and requires no response from them. Thus, for example, in paragraphs 19, 36, 37, and 66 of the Amended Complaint, if Respondents were to undertake to answer in good faith and attempt to address each of the numerous allegations contained within each of these numbered paragraphs, drafting an Answer becomes exceedingly onerous, if not simply an impossibility. For example, in paragraph 66 there are some thirteen (13) run-on sentences, many containing multiple allegations. Some of these could be answered by denying the allegation, some by answering that Defendants have insufficient information, others are merely the legal contentions and conclusions of the Plaintiff requiring no response, and still others allege nothing against these particular Defendants. Respondents would be forced to go through one numbered paragraph (of many) that contains thirteen (13) sentences and file a response to each sentence separately simply because Petitioner will not comply with Rule 10(b). This unfairly transfers the burden of complaint pleading to Respondents when it is Petitioner who is in violation of the rules of procedure and, in addition, the prior order of the

court. The magistrate judge acted appropriately, and within her discretion, when she refused to excuse Plaintiff's non-conforming pleading or to shift the burden to Defendants, and recommended dismissal with prejudice. Similarly, the District Court judge did not abuse his discretion by adopting that recommendation after *de novo* review.

Petitioner's theories of due process and equal protection violations are premised entirely on allegations of intentional misconduct of the judges of the court below, supposedly taken in collusion with defense counsel, and are not worthy of a detailed response. The judgment of the Court of Appeals that they are "spurious and merely pejorative" and lack "any plausible foundation" says all that needs to be said about those groundless and defamatory allegations. Petitioner's Complaint and Amended Complaint were the subjects of two Recommended Decisions and two *de novo* reviews by the assigned judge of those recommendations, and these pleadings have been found not to conform to even the most basic rules of pleading. Petitioner has had his stage to spin out conspiracy theories and continue his campaign of slander against his town, his fellow citizens, and members of the judiciary and bar. Petitioner has had all the legal process he is due, and this Court should allow the decisions of the courts below to stand and deny the petition for a writ of certiorari.

CONCLUSION

For the reasons and legal arguments stated above, the Town of Sanford, Maine and its Inhabitants respectfully request that this Court deny the petition for a writ of certiorari.

Dated at Portland, Maine this 9th day of March, 2005.

Respectfully submitted,

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